

October 06, 2022

EDWARD J. EMMONS, CLERK

U.S. BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: October 6, 2022

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5 HANNAH L. BLUMENSTIEL
6 U.S. Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 In re:) Case No. 21-30770 HLB
14)
15 WESTMORE PROPERTIES LLC,) Chapter 7
16)
17 Debtor.)
18 _____)

ORDER DENYING MOTION FOR RELIEF FROM STAY AS MOOT

19 This case came before the court on October 6, 2022 for a
20 continued hearing on creditor Gregory Cox's Motion for Relief
21 from Stay as to Non-Debtors.¹ Appearances were as noted on the
22 record.

23 The Motion "seeks an order granting relief from the
24 automatic stay as to non-debtors Marilyn Blaustein and Carol
25 Helzberg and the State Court Action² on the grounds that the
26 automatic stay does not extend to non-debtors or the State Court
27 Action as against these non-debtors." Notably, the Motion does
28 not seek relief from stay to pursue the State Court Action as
to the Debtor Westmore Properties LLC, and counsel for Mr. Cox

¹ Dkt. 27 (the "Motion").

² The Motion describes the "State Court Action" as Cox v. Westmore Properties LLC, Case No. CIV 2003170 (Marin County Sup. Ct.).

1 confirmed at the October 6 hearing that his client sought no
2 such relief.

3 Interested parties Carol Helzberg, Marilyn Blaustein, and
4 Steve Hanson (together, the "Respondents") opposed the Motion.³
5 Ms. Helzberg and Ms. Blaustein are the principals of the
6 Debtor; Mr. Hanson is Ms. Blaustein's son. Although they
7 concede that they are not protected by the automatic stay, the
8 Respondents contend that, in the State Court Action, Mr. Cox is
9 pursuing recovery from them on an alter ego theory, and that
10 this allegation and any right to recover from them based on
11 that theory can be asserted only by Chapter 7 Trustee Timothy
12 Hoffman. Mr. Hoffman took no position on the Motion.

13 The parties do not dispute that the automatic stay does
14 not apply to the non-debtor Respondents.⁴ But the automatic
15 stay certainly does prohibit Mr. Cox from prosecuting claims or
16 pursuing remedies that belong to this bankruptcy estate.⁵

17 Mr. Cox's original complaint in the State Court Action⁶
18 asserts claims against the Debtor for negligence, breach of
19 implied warranty, misrepresentation, and nondisclosure arising

21 ³ Dkt. 30.

22 ⁴ In re Chugach Forest Prods, Inc., 23 F.3d 241, 246 (9th Cir. 1994) ("[a]s a
23 general rule, the automatic stay . . . protects only the debtor, property of
the debtor or property of the estate. It does not protect non-debtor parties
24 or their property") (citations and internal quotation marks omitted).

25 ⁵ 11 U.S.C. § 362(a)(3) (prohibiting "any act to obtain possession of property
of the estate or of property from the estate or to exercise control over
property of the estate); see also U.S. v. Dos Cabezas Corp., 995 F.2d 1486,
1491 (9th Cir. 1993) (acknowledging that "unless assets of the bankruptcy
26 estate are at stake, the automatic stay does not extend to actions against
parties other than the debtor").

27 ⁶ Dkt. 27-1 (Declaration of Brian S. Healy re: Motion), Ex. A.

1 from Mr. Cox's purchase of a parcel of real property from the
2 Debtor. These claims are personal to Mr. Cox and do not belong
3 to the bankruptcy estate. But Mr. Cox's complaint in the State
4 Court Action also alleges, on information and belief, that:

5 [C]ertain of the DOE Defendants . . . exercised
6 complete control and dominance over [the Debtor] to
7 such an extent that any individuality, independence, or
8 separateness between these Defendants is purely
9 fictional and did not and does not exist. In that
10 regard, Plaintiff alleges that [the DOE Defendants]
11 inadequately capitalized [the Debtor] and used its
12 assets for their own personal use, rerouted and
13 transferred assets from [the Debtor] to themselves
14 without adequate consideration, and also withdrew funds
15 based on these assets for their own personal use. As
16 such, Plaintiff is informed and believes that [the
17 Debtor] is, and at all times mentioned in this
18 Complaint was, a mere shell, instrumentality, and
19 conduit through which [the DOE Defendants], as [the
20 Debtor's] alter ego, carried on their business.
21 Accordingly, if such allegations are proven, and given
22 the extent of damages that Plaintiff has suffered . . .
23 justice would be served if [the DOE Defendants] were
24 also held responsible, along with [the Debtor], jointly
25 and severally, for [the Debtor's] liability to
Plaintiff; it would be inequitable otherwise.

26 Sometime after Mr. Cox filed his complaint, he added the
27 Respondents as defendants in the State Court Action, so it is
28 clear that these alter ego allegations were aimed at them. But
this alter ego allegation, as well as any ability to recover
from respondents based thereon, belongs to the bankruptcy
estate and the only party with standing to pursue such recover
is Mr. Hoffman.

The Motion does not request permission to pursue any
claims on behalf of the bankruptcy estate. And Mr. Hoffman
also has sued Ms. Helzberg and Ms. Blaustein to pursue certain

1 claims of the estate, namely the recovery of allegedly
2 fraudulent or otherwise wrongful transfers.⁷

3 At the October 6 hearing, the parties asked this court to
4 "provide guidance" to the state court as to what claims Mr. Cox
5 could or could not bring against the Respondents. But as the
6 court stated in response to this request, it cannot read Mr.
7 Cox's mind, and cannot possibly be expected to anticipate
8 exactly what claims he might properly assert against those
9 defendants, other than clearly stating that he cannot pursue
10 claims that belong to the bankruptcy estate, such as the
11 fraudulent transfer claims asserted in the AVP, or recovery
12 based on the alter ego theory set forth in Mr. Cox's complaint.

13 In response to the court's concern, the respondents
14 offered that the court could simply state that Mr. Cox could
15 bring no claims against them that were "derivative" of the
16 Debtor's liability to Mr. Cox, because such claims belong to
17 the bankruptcy estate. The court does not believe this
18 characterization to be appropriate, accurate, or helpful to the
19 state court, as it will simply lead to litigation over what
20 claims against the respondents might be "derivative" of those
21 that might be asserted against the Debtor.

22 The court must also point out that Mr. Cox is the only
23 claimant in this bankruptcy case. Any recovery Mr. Hoffman
24 might see in the AVP will be used (in part) to pay Mr. Cox's
25 claim. Essentially, the State Court Action and the AVP benefit
26 one, and only one, creditor: Mr. Cox.

27
28 ⁷ Hoffman v. Blaustein et al, Adv. Proc. No. 22-3021 (Bankr. N.D. Cal.) (the
"AVP").

Accordingly, and for the reasons stated on the record, the court **ORDERS** as follows:

1. The Motion is **DENIED AS MOOT**. The automatic stay does not apply to Non-Debtor Respondents Carol Helzberg, Marilyn Blaustein, or Steve Hanson, and there is no need to grant relief from a stay that does not apply.

7 2. Unless or until he receives permission from this
8 court, Mr. Cox may not pursue claims that belong to the
9 bankruptcy estate against Ms. Helzberg, Ms. Blaustein, Mr.
10 Hanson, or anyone else.

****END OF ORDER****

Court Service List

[None]